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Surface Transportation Board

Hearing on Public Views on Major Consolidations

STB Ex Parte No. 582

March 8, 2000

COMMENTS OF THE

TRANSPORTATION INTERMEDIARIES ASSOCIATION

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EXECUTIVE DIRECTOR & CEO

Chairman Morgan, Vice Chairman Burkes, Commissioner Clyburn, my name is Robert A. Voltmann. I serve as the Executive Director & CEO of the Transportation Intermediaries Association (TIA). TIA is the only organization representing transportation intermediaries of all disciplines operating in domestic and international commerce. The members of TIA include: intermodal marketing companies (IMC's), property brokers, international forwarders, NVOCCs, domestic freight forwarders, air forwarders, perishable commodity brokers, and logistics management companies. TIA also provides management services for the American International Freight Association (AIFA), a leading organization of NVOCCs. AIFA is the U.S. representative of FIATA, an international organization of more than 40,000 freight forwarders.

The members of TIA appreciate the opportunity to present their views and concerns regarding the rail policy of United States. We commend you for your leadership in conducting this new, pro-active approach to rail mergers. We also applaud the STB for your effort and stamina to begin the important process of reviewing the future of the nation's rail system. TIA believes the Board has an unique opportunity to use this process to not just look at the rail industry on its own, but to view how the use of rail can be increased, and how rail fits into a North American interconnected North American transportation system.

The members of TIA are fiercely independent businesses that fully support a deregulated, open marketplace for both large and small consumers. Beginning in 1980 and continuing to this day, we have seen even the partial deregulation of the transportation industry become a tremendous success! All of the modes of transportation that have been fully or partially deregulated are better and stronger today than they were prior to deregulation.

For example, no one today questions the success of motor carrier deregulation. The head-to-head competition of that industry has brought about a depth of service and pricing options available to customers to move their products that are unparalleled in history. The on-time performance, innovation, and service commitments of motor carriers have become the benchmark by which all other modes of transportation are judged.

The partial deregulation of the railroad industry has also been a great success. An industry that was once on the verge of bankruptcy is now profitable. It is now time to finish the job and further deregulate the industry. TIA has joined with other rail customers in supporting legislation that would begin this process. Even without the legislation, the Board has a historic opportunity to review the nation's rail policies and breath new life into them by fostering increased rail-to-rail competition.

Our current rail policies were developed some 20 years ago in the Staggers Act. These policies were written with an entirely different set of circumstances in mind than that which exist today. In 1980, there was 42 Class I railroads. We can look forward to a future of only two major railroads in all of North America. At a time when shippers are facing increased competition that requires immediate access to competitive rates and service, the concentration within the rail industry, without changes to the regulatory environment, has reduced service and competitive alternatives. It should become clear from this proceeding that only the railroads and some of their largest shippers are happy with the current state of affairs.

The policies enacted by Congress in 1980 regarding railroads are still sound. They call for competition and minimal government intervention.[1] In fact, deregulation only works when there

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[1] The rail transportation policy, as set out in 49 U.S.C. 10101 states,

> In regulating the railroad industry, it is the policy of the United States Government –
> (1) To allow, to the maximum extent possible, competition and the demand for services to establish reasonable rates for transportation by rail;
> (2) To minimize the need for Federal regulatory control over the rail transportation system and to require fair and expeditious regulatory decisions when regulation is required;
> (3) To promote a safe and efficient rail transportation system by allowing rail carriers to earn adequate revenues, as determined by the Board;
> (4) To ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes, to meet the needs of the public and the national defense;
> (5) To foster sound economic conditions in transportation and to ensure effective competition and coordination between rail carriers and other modes;
> (6) To maintain reasonable rates where there is an absence of effective competition and where rail rates provide revenues which exceed the amount necessary to maintain the rail system and to attract capital;
> (7) To reduce regulatory barriers to entry into and exit from the industry
> (8) To operate transportation facilities and equipment without detriment to the public health and safety;

is effective competition. It is not the policies of Congress that need to change, but their implementation.

For 20 years, the Interstate Commerce Commission and now the STB have interpreted those policies and enforced those provisions addressing the economic health of the railroads. These goals have been admirably met. No one today can question the successful transformation of near bankrupt railroads to the economic powerhouses of today. It is now time to move beyond the period of partial regulation and federal protection of railroads, to the competitive rail market envisioned by Congress in 1980.

The STB needs to emphasize that the national rail policy is based on rail-to-rail competition and not merely what is good for the railroads. The STB needs to emphasize that railroads exist to serve their customers, not the other way around. It is time for us to take the next step in deregulating this industry both at the STB and in Congress. Similar deregulatory steps have been taken with other comparable industries such as telephone companies and gas pipelines that have resulted in increased service, innovation, and competition. Relying on competition to regulate a marketplace is not re-regulation. It is deregulation.

Mergers

Over the past five years, TIA members and other rail customers have seen the rail industry merge. While all of the mergers promised improved efficiency and service, the rail customer has yet to see these occur. In the intermodal industry, railroads have promised an increased ability to handle intermodal freight, but this has proven not to be the case. For example, in the

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(9) To encourage honest and efficient management of railroads;
(10) To require rail carriers, to the maximum extent practicable, to rely on individual rate increases, and to limit the use of increases of general applicability;
(11) To encourage fair wages and safe and suitable working conditions in the railroad industry;
(12) To prohibit predatory pricing and practices, to avoid undue concentrations of market power, and to prohibit unlawful discrimination;
(13) To ensure the availability of accurate cost information in regulatory proceedings, while minimizing the capability of providing such information;
(14) To encourage and promote energy conservation; and
(15) To provide for the expeditious handling and resolution of all proceedings required or permitted to be brought under this part.

Conrail acquisition, both CSX and Norfolk Southern promised to take one million trucks off the road annually. This goal was admirable for environmental and public policy reasons. Unfortunately, as a result of the merger, the opposite appears to be true. After experiencing these past mergers, the members of TIA and many other rail customers are hesitant about future rail mergers unless the format in which they are created is changed.

While rail mergers are similar to mergers in other industries, they are not exactly the same. Most rail customers are served by only one railroad. These customers are captive and must be protected from anticompetitive market conditions. If Exxon and Texaco were to merge, consumers would still be able to drive to another service station to buy gas. Rail customers, however, can only use the railroad that comes to their facility.

Access

The concentration of the industry combined with policies adopted by the ICC and STB have allowed the railroads to limit competitive routing freedoms, lesson competition, and even limit access to the rail network itself. The ICC and now the STB have approved policies that have eliminated shippers' ability to route freight over a competing railroad. Even where competition could be brought to bear, the agency has adopted policies that eliminate the ability to effectively challenge bottleneck rates.

A serious issue has arisen in the intermodal industry over the past three years that has hindered the ability of small to medium size intermodal marketing companies (IMC's) to serve the marketplace. Some of the rail carriers have erected artificial barriers on IMC's. These IMC's serve America's small businesses and provide them the ability to get their goods to market at an affordable price. While the freight handled by IMC's may be intermodal, and, therefore, transferable, the IMC in many cases is captive to a particularly railroad due to volume commitments.

In October 1998, one of the two western railroads decided it was working with too many intermodal marketing companies. The BNSF unilaterally raised the contract minimum from $500,000 to $5 million annually forcing many small and mid-size IMCs to form consortiums in order to stay in business. This was not a consumer or the market place decision; it was the decision of the supplier of a service.

While BNSF has recently announced that it will lower their volume commitment to $2.5 million annually at the same time raising its bond requirement to $250,000. This is a lot of capital for small to mid-sized IMC's to keep tied up on a bond, while at the same time, the railroad drafts their amount for payment.

Recently, Norfolk Southern announced that it was raising the volume minimum for IMC's from 250 units a year to 1,000. NS chose to take this action even after we met with their Intermodal Department officials and expressed our industry's commitment to help them grow their intermodal business while allowing full access to those IMC's who service small business America.

The actions taken by BNSF and NS could not occur in a competitive, open market. It should be the market place that determines who succeeds and who fails, not the supplier of the service.

The Future

We applaud the Board for examining the many issues surrounding our nation's rail system. Over the past 20 years, the United States has turned transportation from what could be considered a liability to a strategic asset. We must now begin making the changes necessary to meet the challenges of tomorrow. We need the leadership of the STB and Congress to finish the job of rail deregulation to create a truly competitive rail environment. For our economy to continue to grow, we need to move more freight more efficiently. Railroads must play an increasing role in the transportation system. To do so, however, will take a paradigm shift on their part. We believe such a shift will only occur when there is true rail-to-rail competition. Under the current regulatory structure, the standard of rail-to-rail competition is not being met. Unless the regulatory structure is changed, future mergers will only limit, not increase, the opportunity for rail-to-rail competition.

It appears that the railroads view their market as static instead of dynamic. It is almost as if they have adopted a philosophy of erecting a fence around the freight they have today. They do not look at increasing their business by helping their consumers, but by decreasing the amount of freight handled and lines used while maximizing profit. Again, this can only occur in a market that is not intramodally competitive. If our nation's rail system is going to survive, it must become a system that is an intramodally competitive market where market pressures will regulate railroad behavior.

The recently announced merger of the BNSF and Canadian National offers the Board and the industry the unique opportunity to examine what works and what does not work in our current rail policy. It gives us the opportunity to look at the system used in Canada, as our rail systems become North American rail systems instead of national systems. The Canadian system has been in place for many years, and while not perfect, it seems to offer the balanced competition that is needed today.

The Board's Unique Role

The Board is in a unique position to review how railroads fit into our transportation system and what role they will play. Transportation is the lifeblood of our economy. For continued economic growth, that system will need to handle more freight more efficiently. The Board, as an independent body, can and should work with the industry, Congress, and the Administration to craft a proposal that will meet our future transportation needs.

The ICC during its long and honorable history not only administered the laws Congress enacted, but also proposed specific changes to those laws. The agency took those steps because it can view issues in a less political light. Such was the case when ICC Commissioners Karen Phillips and Ed Emmett recommended that the Commission propose specific Motor Carrier Act changes to Congress. The Commission adopted the Phillips/Emmett proposal and transmitted it to

Congress. The ICC's proposal was enacted – almost word-for-word – as part of the Trucking Industry Regulatory Reform Act of 1994.

The Surface Transportation Board can show this same leadership. This hearing is a major step in that direction. A step toward revisions that will lead toward a rail policy that relies on intramodal as well as intermodal competition. A rail policy that stimulates innovation and service improvements, which will in turn, stimulate growth in the use of rail. A rail policy that meets the needs of North American shippers.

Conclusion

The members of TIA stand ready to work with the STB and our railroad partners to grow the current rail system and ensure it provides the North American consumer increased access and service. We also pledge to work with our industry partners and the government to ensure the rail system becomes an interconnected part of our growing continental transportation system. Thank you for the opportunity to appear before you.